

### REMARKS

The specification has been amended to reflect the appropriate drawing designations for Figure 4 in accordance with the Examiner's suggestion. No new matter is added.

The Examiner has required a restriction to one of the following inventions:

- I. Claims 2-9, 13, 15, 17, 19 and 21 drawn to a transgenic non-human mammal having a disruption of FHIT, and methods of using said transgenic, classified in class 800, subclass 13;
- II. Claim 10 drawn to a transgenic non-human mammal having a disruption of FHIT and MSH2, classified in class 800, subclass 13; and
- III. Claims 1, 11, 12, 14, 16, 18, 20 and 22 drawn to cells having a disruption of the FHIT gene, and methods of using said cells, classified in class 435, subclass 325.

In order to be fully responsive, Applicants hereby elect Group I, *i.e.*, claims 2-9, 13, 15, 17, 19 and 21, drawn to a transgenic non-human mammal having a disruption of FHIT and methods of using said transgenic, classified in class 800, subclass 13, with traversal.

With respect to the Examiner's division of the invention into three groups and the reasons stated therefor, Applicants respectfully traverse. Even assuming, *arguendo*, that Groups I - III represented distinct or independent inventions, Applicants submit that to search and examine the subject matter of all the groups together would not be a serious burden on the Examiner.

The M.P.E.P. § 803 (Eighth Edition, August 2001) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, in view of M.P.E.P. § 803, all of claims 1-22 should be searched and examined in the subject application. At the very least, the claim of Group II, *i.e.*, claim 10,


should be examined with the claims of Group I. Doing so would not impose an undue burden on the Examiner, as a search of transgenic non-human mammals having a disruption of FHIT would necessarily identify art that relates to transgenic non-human mammals having a disruption of FHIT and further comprising a disruption of MSH2. Accordingly, Applicants respectfully request that the Restriction Requirement Under 35 U.S.C. § 121 be withdrawn and the instant claims be examined in one application, or at the very least modified to include claim 10, presently assigned to Group II, in Group I.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Applicants respectfully request that the above-made amendments and remarks be entered and made of record in the file history of the instant application.

Respectfully submitted,

Date: October 8, 2002

  
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**EXHIBIT A**  
**A MARKED UP VERSION OF THE**  
**PARAGRAPH IN THE SPECIFICATION**  
**OF U.S. APPLICATION SERIAL NO. 09/832,424**  
**AMENDED ON OCTOBER 8, 2002**  
**ATTORNEY DOCKET NO.: 8666-009**

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*Marked up version of amended paragraph beginning at page 4, line 20 of the specification:*

FIG. 4A-4D [4]: Immunohistochemical detection of human FHIT in MTS tumors. A, FHIT expression in normal hair follicle (200x); note that dense keratin horn shows nonspecific staining; B, FHIT expression in normal sebaceous gland (200x); C, hematoxylin and eosin (H&E) staining of a Muir-Torre Syndrome case 1 sebaceous tumor; D, lack of FHIT expression in most cells of the case 1 sebaceous tumor.